

RICO: Legislative Activity in the 107th Congress

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Summary

The federal Racketeer Influenced and Corrupt Organization (RICO) provisions outlaw the use of various state and federal crimes (RICO predicates) to acquire, maintain, or conduct the activities of a formal or informal enterprise whose activities affect interstate or foreign commerce, 18 U.S.C. 1961-1965. Violations subject offenders to criminal penalties and civil liability.

The USA PATRIOT Act added terrorist offenses to the list of RICO predicates. Other proposals introduced in the 107th Congress address offenses that their sponsors believe should be classified as RICO predicates. Still others would expand the remedies available to the victims of RICO violations.

RICO has figured in the appropriations process as well. The Justice Department has on several occasions unsuccessfully sought a specific appropriation to fund its RICO civil suit against several major tobacco companies (*United States v. Philip Morris*, 116 F.Supp. 2d 131 (D.D.C. 2000), see e.g., *Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 2000: Hearings Before a Subcomm. on the House Comm. on Appropriations, Pt. 2*, 106th Cong., 1st Sess. 429 (1999)). In lieu of the alternative means of funding approved in the past, 28 U.S.C. 509 note, the President's budget for FY2003 calls for direct appropriation support.

Related CRS Reports include CRS Report 96-950, *RICO: A Brief Sketch*; CRS Report RS20736, *RICO: An Abridged Sketch*; CRS Report RS20377, *RICO: Legislative Activity in the 106th Congress*; and CRS Report RS20091, *The Federal Lawsuit Against Tobacco Companies to Recover Health Care Costs*.

Summary of Legislation

P.L. 107-56 (H.R. 3162) (Rep.Sensenbrenner et al.): Section 813 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act adds the terrorist offenses identified in 18 U.S.C. 2332b(g)(5)(B) to the RICO predicate list. A similar provision appeared as section 814 in S.1510 as introduced in, and passed by, the Senate; as section 813 in H.R. 2975 as passed by the House; and as section 813 in H.R. 3108 as passed by the House; section 304 of H.R. 2975, both as introduced and as reported out of the House Committee on the Judiciary, included a similar but more selective list of terrorist offenses which it would have added to the list of RICO predicates.

S. 2010 (Sen. Leahy et al.): Section 3 of the Corporate and Criminal Fraud Accountability Act of 2002, as introduced, would amend the civil remedies section of RICO, 18 U.S.C. 1964, (1) to permit state Attorneys General and the Securities and Exchange Commission to invoke the extraordinary equitable powers of the federal courts in order to prevent RICO violations; and (2) to estop convicted RICO defendants from denying similar allegations in civil proceedings brought by the states. As now written, section authorizes the U.S. Attorney General to invoke the equitable powers of the court, 18 U.S.C. 1964(b), and convicted RICO defendants are estopped from denying similar allegations in civil proceedings brought by the United States, 18 U.S.C. 1964(d).

H.R. 3644 (Rep. Conyers et al.): As originally enacted, 18 U.S.C. 1964 entitled those injured in their business or property by any RICO violation to treble damages. The Section was amended to exclude causes of action based on allegations of fraud in the purchase or sale of securities (unless the defendant had been convicted). Section 2 of the Securities Fraud Prevention Act of 2002 would repeal the exception and return section 1964(c) to its original state.

S. 1236 (Sens. Feinstein & Hatch.): Section 8(b)(4) of the Criminal Gang Abatement Act of 2001 would add to the list of RICO predicates, serious felonies (*i.e.*, murder; kidnapping; arson; robbery; bribery; extortion; and dealing in obscene material, controlled substances or listed chemicals) that would have been punishable under state law had they not been committed in Indian country or within a federal enclave (under the exclusive special maritime or territorial jurisdiction of the United States or in Indian country under the major crimes act (18 U.S.C. 1151)).

S. 1742 (Sen. Cantwell): Section 4 of the Restore Your Identity Act of 2001 would add state felonies involving identification documents to the list of RICO predicates.

S. 1775 (Sen. Hutchinson)/H.R. 2060 (Rep. Nethercutt)/H.R. 2795 (Rep.Nethercutt with Reps. Chambliss & Cunningham): Section 2 of the Agroterrorism Prevention Act of 2001 would amend the animal enterprise terrorism provisions (18 U.S.C. 43) to include plant enterprise terrorism. Section 4 of the bill would add the amended section 43 to the list of RICO predicates.

S. 2091 (Sen. Torricelli): Section 2(c) of the Gun Kingpin Penalty Act would make RICO predicate offenses of:

- 18 U.S.C. 922(a)(1)(A)(unlicensed importation, manufacture or dealing in firearms)
- 18 U.S.C. 922(a)(3)(interstate transportation or receipt of firearm)
- 18 U.S.C. 922(a)(5)(transfer of firearm to person from another state)
- 18 U.S.C. 922(a)(6)(false statements made in acquisition of firearm or ammunition from a licensee)
- 18 U.S.C. 922(d)(disposition of firearm or ammunition to a prohibited person)
- 18 U.S.C. 922(g)(receipt of firearm or ammunition by a prohibited person)

- 18 U.S.C. 922(h)(receipt of firearm or ammunition on behalf of a prohibited person)
- 18 U.S.C. 922(i)(transportation of stolen firearm or ammunition)
- 18 U.S.C. 922(j)(receipt of stolen firearm or ammunition)
- 18 U.S.C. 922(k)(transportation or receipt of firearm with altered serial number)
- 18 U.S.C. 922(z)(gunrunning)
- 18 U.S.C. 924(b)(shipment or receipt of firearm for use in a crime).

H.R. 2978 (Rep. Roukema): Section 303(b) of the Money Laundering Prevention Act would add burglary and embezzlement punishable as felonies under state law to the list of RICO predicates.

H.R. 3275 (Rep. Smith (Tex.)): Section 102(a) of the Terrorist Bombing Convention Implementation Act of 2001 would outlaw bombings condemned by the Convention (18 U.S.C. 2332f). Section 103(e) would add section 2332f to the list of RICO predicates.

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